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Request for a subvention to the Special Court for Sierra Leone

Report of the Secretary-General

Summary

In an exchange of letters between the Secretary-General and the President of the Security Council (S/2004/182 and S/2004/183), the Secretary-General drew the attention of the Council to the difficulties faced by the Special Court for Sierra Leone with regard to its third-year budget and proposed that the matter be brought to the attention of the General Assembly with a view to seeking the appropriation of funds for the Court. The President of the Security Council noted the course of action proposed by the Secretary-General and expressed no objection.

The present report, submitted in response to the exchange of letters, sets out the overall level of resources required for the period from 1 July 2004 to 31 December 2005.

The approval of a subvention of up to $40 million is sought from the General Assembly, of which $16.7 million relates to the period from 1 July to 31 December 2004 and the remaining $23.3 million relates to 2005. Given that the amount requested is to supplement voluntary contributions, including those that have been pledged but have not yet been paid, the Secretary-General intends to report to the General Assembly at the main part of its fifty-ninth session on the status of such contributions and seek the approval of the Assembly for the release of the relevant balance of the overall requirements indicated in the present report. To the extent that voluntary contributions received exceed the level currently anticipated, the amount assessed would be reduced.

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I. Introduction

1. In his letter to the President of the Security Council dated 26 February 2004 (S/2004/182), the Secretary-General informed the Council of the financial difficulties faced by the Special Court for Sierra Leone with regard to its operation beyond 1 July 2004. Notably, the Council was advised that, despite the efforts of the Secretary-General as well as demarches and other efforts at the highest level by representatives of Member States, financing through voluntary contributions would carry the Special Court only to the end of the second year of its operation (i.e., until 30 June 2004), by which time the Court would have consumed most of the moneys thus far available to it.

2. In this connection, the Secretary-General indicated that the shortfall for all or part of the third-year costs should be addressed through assessment, while preserving the independent nature of the Special Court. Further, the Secretary-General indicated that the Council might wish to invite him to bring the matter to the attention of the General Assembly.

3. In his letter to the Secretary-General (S/2004/183) dated 10 March 2004, the President of the Security Council expressed no objection to the approach proposed by the Secretary-General on the understanding that any action taken with the General Assembly on the issue would in no way affect the independence and structure of the Special Court for Sierra Leone as established by the Agreement between the United Nations and the Government of Sierra Leone signed on 16 January 2002.

4. The present report is submitted in response to that exchange of letters. It sets out the overall level of resources required for the period from 1 July 2004 to 31 December 2005 and requests a subvention of up to $40 million to supplement voluntary contributions, including those that have been pledged but have not yet been paid, as well as those received. Since its inception, the Special Court has been sustained by voluntary contributions of $49.3 million.

II. Historical background on the financing of the Special Court for Sierra Leone

5. The Security Council, by its resolution 1315 (2000) of 14 August 2000, requested the Secretary-General to negotiate an agreement with the Government of Sierra Leone with a view to creating an independent special court with the primary objective of prosecuting persons who bore the greatest responsibility for the commission of crimes against humanity, war crimes and other serious violations of international humanitarian law, as well as crimes under relevant Sierra Leonean law within the territory of Sierra Leone.

6. In previous reports (S/2000/915, para. 70, and S/2001/40, para. 11), the Secretary-General has expressed the view that the only realistic solution was for the Special Court to be financed from assessed contributions, as it would produce a viable and sustainable financial mechanism affording secure and continuous funding. In his letter to the Secretary-General dated 22 December 2000 (S/2000/1234), the President of the Security Council reiterated the support of the Council for its resolution 1315 (2000), under which the creation of the Special Court

would be funded through voluntary contributions. It was, however, understood by the Security Council that the Secretary-General would not be expected to create any institution for which he did not have adequate funds in hand for at least 12 months and pledges to cover expenses for a second year of the Court's operation.

7. Consequently, after sufficient funds had been received and substantial amounts pledged for that purpose, on 16 January 2002 the United Nations Legal Counsel and the Attorney-General of Sierra Leone signed the Agreement between the United Nations and the Government of Sierra Leone on the Establishment of a Special Court for Sierra Leone (S/2002/246 and Corr. 2 and 3, appendix II).

III. Progress made

8. The Special Court is presently in its second year of operation. Since its inception in July 2002, tremendous progress has been made in setting up the Court in Freetown. The Registrar has put in place the necessary infrastructure and support services to ensure effective support to the Chambers and the Office of the Prosecutor as well as provision of a competent defence of the accused. In addition, he continues his efforts to mobilize resources.

9. The Prosecutor has been conducting extensive investigations both inside and outside Sierra Leone with a view to going to trial shortly, the Special Court's courthouse having recently been opened, on 10 March 2004. As at February 2004, 11 persons associated with all three of the country's former warring factions stood indicted by the Special Court. They are charged with war crimes, crimes against humanity and other serious violations of international humanitarian law. Specifically, the charges include murder, rape, extermination, acts of terror, enslavement, looting and burning, sexual slavery, conscription of children into an armed force and attacks on United Nations peacekeepers and humanitarian workers, among others. Indictments against two other persons were withdrawn in December 2003 due to the deaths of the accused. The trial chamber recently ruled that the nine persons indicted by the Court and currently in its custody should be tried in three groups. Trial activity will commence in May 2004. The estimated duration of the three trials is approximately one year. Allowing for appeals after the trial judges have rendered their decisions, these trials are estimated to be completed by December 2005.

IV. Financial position

10. Despite efforts by the Special Court, the Secretary-General and Member States to mobilize further resources, the level of voluntary contributions available to the Court remains low. Current estimates indicate that available voluntary contributions will carry the Special Court only to the end of its second year of operations, or 30 June 2004.

11. While the mobilization of resources is continuing, immediate alternative mechanisms for financing are necessary in order to bridge the anticipated shortfall. Until very recently, the Special Court anticipated that approximately $8 million might yet be available from voluntary contributions. However, as reflected in annex I below, because of a shortfall in the second year, the Special Court now

anticipates that only $1.8 million will be available from voluntary contributions for the third year. The proposed overall level of resources required for the period up to 30 June 2005 (the end of the third year of its operation) is almost $30 million, as summarized in annex II, generating an anticipated shortfall of approximately $28.2 million. In addition, while a definitive exit and completion strategy has yet to be finalized, an amount of $10 million for the period from 1 July to 31 December 2005 is proposed for the completion phase, reflecting a reduced scope of activities.

12. In this connection, to ensure that the Special Court is able to complete the work it started two years ago, the Secretary-General proposes that a subvention of up to $40 million be made available to the Special Court, while preserving its independent nature and structure. Of that amount, an estimated $16.7 million (taking into account currently available voluntary contributions of $1.8 million) would be made available for the period from 1 July through 31 December 2004 from the unearmarked balance of the provision for special political missions under section 3, Political affairs, of the programme budget for the biennium 2004-2005. As efforts are expected to continue to be made to mobilize voluntary contributions, the Secretary-General intends to revert to the General Assembly at its fifty-ninth session on the status of the Court's financial position and, as necessary, the appropriation and approval of the release of the balance of overall resources up to $23.3 million requested in the present report to supplement voluntary contributions pledged but as yet unpaid, as well as contributions that have been received during the period. The position is summarized in annex III.

13. The requested subvention, once approved by the General Assembly, would be disbursed by the Organization to the Special Court on an incremental basis through the mechanism of the Controller effecting transfers to the Registrar. The Registrar, as an appointee of the Secretary-General, would be required, in this connection, to provide the Controller with monthly statements of all expenditures and income of the Special Court. The existing arrangements whereby the Court contracts with the Office of Internal Oversight Services for internal audits and with the Auditor-General of South Africa for external audit services would remain in place. At the time of the liquidation of the Court, any residual funds would revert to the United Nations.

V. Conclusion and recommendation

14. **The Secretary-General seeks the approval of the General Assembly for funding of up to $40 million to supplement the financial resources of the Special Court for Sierra Leone to enable it to complete its mandate.**

15. **Should the General Assembly decide to approve such support for the Special Court, a subvention in the amount of $16.7 million would be required for the period from 1 July to 31 December 2004, to be charged to the unearmarked balance of the provision for special political missions under section 3, Political affairs, of the programme budget for the biennium 2004-2005. The Secretary-General would report to the General Assembly at the main part of its fifty-ninth session on action required for appropriation of the balance of requirements, up to $23.3 million, for the year 2005 for completion of the work of the Court.**

Annex I

Availability of funds for the Special Court for Sierra Leone as at 10 March 2004 (1 July 2003 to 30 June 2005)

(United States dollars)

Income	
A. Contributions received	
Year-2 pledges received	13 530 790.19
Additional year-2 receipts above amounts pledged and not pledged	8 418 896.41
Year-3 pledges received in advance	9 287 347.50
Additional year-3 receipts above amounts pledged and not pledged	1 959 170.95
Subtotal (A)	**33 196 205.05**
B. Pledges unpaid	
Outstanding year-2 pledges	185 289.81
Outstanding year-3 pledges[a]	3 156 500.00
Subtotal (B)	**3 341 789.81**
Total voluntary contributions (A+B)	**36 537 994.86**
Total expenditure for the period 1 July 2003 to 30 June 2004	**34 705 626.00**
Excess/(shortfall) of income over expenditure for carry-over to 2004-2005	**1 832 368.86**

[a] Includes an advance contribution for year 3 from the United Kingdom of Great Britain and Northern Ireland in the amount of $2.8 million with expected receipt date of 1 April 2004.

Annex II

Indicative resource requirements as reflected in the budget of the Court for its third year of operations (1 July 2004-30 June 2005)

Table 1
Requirements by component
(United States dollars)

Component	*2004-2005 estimate*
1. The Chambers	2 754 480
2. The Office of the Prosecutor	5 447 492
3. The Registry	21 780 408
Total	**29 982 380**

Table 2
Requirements by object of expenditure
(United States dollars)

Object of expenditure	*2004-2005 estimate*
Posts (gross)	17 487 974
Temporary posts	881 833
Compensation to judges	1 652 200
Consultants and experts	250 000
Witness costs	1 328 347
Travel	668 790
Contractual services	4 672 240
General operating expenses	2 145 355
Hospitality and outreach	20 000
Supplies and materials	875 641
Total	**29 982 380**

Table 3
Post requirements

Category	
Professional and above	
Judges (USG level)	11
USG	1
ASG	2
D-2	4
D-1	1
P-5	8
P-4	19
P-3	29
P-2	21
P-1	2
Subtotal	**98**
General Service	
Principal level	7
Local level	168
Field Service	65
National Professional Officer	3
Subtotal	**243**
Total	**341**

Annex III

Financing of the Special Court for Sierra Leone, 2004-2005

(United States dollars)

A. Requirements	
1 July to 31 December 2004[a]	18 500 000
1 January to 30 June 2005	11 500 000
1 July to 31 December 2005 (completion phase)	10 000 000
Total estimated requirements	**40 000 000**
B. Subvention	
Amount to be effected in mid-2004 against existing appropriation[a]	16 700 000
Maximum subvention to be effected at end of 2004 by revised appropriation	23 300 000
Total subvention	**40 000 000**

[a] This figure reflects $18.5 million in expenditure being made by a subvention of $16.7 million and use of the anticipated balance of $1.8 million as of 30 June 2004.